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LETTER DATED 29 DECEMBER 1995 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 748 (1992) CONCERNING THE LIBYAN ARAB JAMAHIRIYA ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith the report of the Security Council Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya, containing an account of the Committee's activities since the beginning of 1995. The present report, which was adopted by the Committee at its 63rd meeting on 22 December 1995, is submitted in accordance with the note by the President of the Security Council of 29 March 1995 (S/1995/234).

(Signed) Karel KOVANDA
Chairman
Security Council Committee established
pursuant to resolution 748 (1992)
concerning the Libyan Arab Jamahiriya

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Annex

Report of the Security Council Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya

I. INTRODUCTION

1. By resolution 748 (1992) adopted on 31 March 1992, the Security Council, acting under Chapter VII of the Charter of the United Nations, imposed a regime of mandatory sanctions against the Libyan Arab Jamahiriya relating to various aspects of air links with, the supply of arms and military weapons to, reduction and restriction of the activities of the diplomatic and consular missions of, and restrictions on known or suspected terrorist nationals of the Libyan Arab Jamahiriya.

2. By paragraph 9 of the same resolution, the Security Council established a committee consisting of all members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

"(a) To examine the reports submitted pursuant to paragraph 8 above;

"(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the measures imposed by paragraphs 3 to 7 above;

"(c) To consider any information brought to its attention by States concerning violations of the measures imposed by paragraphs 3 to 7 above and, in that context, to make recommendations to the Council on ways to increase their effectiveness;

"(d) To recommend appropriate measures in response to violations of the measures imposed by paragraphs 3 to 7 above and provide information on a regular basis to the Secretary-General for general distribution to Member States;

"(e) To consider and to decide upon expeditiously any application by States for the approval of flights on grounds of significant humanitarian need in accordance with paragraph 4 above;

"(f) To give special attention to any communications in accordance with Article 50 of the Charter from any neighbouring or other State with special economic problems that might arise from the carrying out of the measures imposed by paragraphs 3 to 7 above".

3. By resolution 883 (1993), adopted on 11 November 1993 at its 3312th meeting, the Security Council, acting under Chapter VII of the Charter, significantly expanded the measures relating to sanctions against the Libyan Arab Jamahiriya imposed earlier by its resolution 748 (1992) and, correspondingly, expanded the mandate of the Committee. The full range of those procedural measures is contained in paragraphs 3 to 7 of the resolution.

4. The Committee adopted the present report at its 63rd meeting, on 22 December 1995. The purpose of the report is to present a factual summary of the Committee's activities since its establishment in April 1992, particularly during the calendar year 1995, in accordance with the transparency measures outlined by the President of the Security Council on 29 March 1995 (S/1995/234). During 1995, the Committee held 16 meetings and handled over 100 incoming communications relating to various aspects of the implementation of the mandatory sanctions, as well as a comparable number of replies.

II. SUMMARY OF THE COMMITTEE'S WORK

A. General observations

5. In paragraph 3 of its resolution 748 (1992) the Security Council, acting under Chapter VII of the Charter, decided that, on 15 April 1992, all States should adopt measures pursuant to paragraphs 3 to 7 of the resolution unless the Secretary-General reported to the Council that the Libyan Government had complied with the conditions set under paragraphs 1 and 2 of the resolution. At the same time, under paragraph 8, the Security Council requested all States to report to the Secretary-General by 15 May 1992 on the measures they had instituted for meeting the obligations so set out by the Council.

6. In view of the fact that full responsibility for the implementation of the mandatory sanctions rests with States, on 31 March 1992, the Secretary-General, pursuant to paragraph 8 of the resolution, transmitted to the Libyan Arab Jamahiriya, and on 3 April 1992 to all States, the text of the resolution, drawing their particular attention to the provisions of paragraphs 4 to 8 thereof. The text of the resolution was also sent to all international organizations.

7. The Secretary-General, pursuant to paragraph 8 of the resolution, has issued three reports on progress in the implementation of resolution 748 (1992). These reports are contained in documents S/23992 and Add.1 and Add.2.

8. At the request of the Committee, the Secretary-General addressed a note in the form of a reminder to those States that had not replied to his previous note pursuant to paragraph 8 of resolution 748 (1992) requesting all States to report to him by 15 May 1992 on the measures they had instituted for meeting the obligations set out in paragraphs 3 to 7. Also, in accordance with a decision of the Committee, the Chairman issued a press statement on 25 June 1992, appealing to those States that had replied to the Secretary-General's previous note but whose replies appeared to be incomplete to give a full account of the specific measures they had instituted for implementing the provisions set out in paragraphs 3 to 7 of resolution 748 (1992).

9. At its 10th meeting, on 14 August 1992, the Committee authorized the Chairman to issue a press statement, indicating the great concern expressed by the members of the Committee over insufficient implementation of resolution 748 (1992) and specifically of its provisions requesting the reduction of the number and level of Libyan diplomatic and consular representation. The Committee further authorized the Chairman to prepare material analysing the

measures reported by States for implementing the pertinent provisions of resolution 748 (1992) by States.

10. In view of the lack of compliance of the Libyan Arab Jamahiriya with the requirements in resolution 731 (1991), the Security Council decided to increase the range of sanctions against that country on 11 November 1993, by adopting resolution 883 (1993). 1/ Those sanctions came into force on 1 December 1993.

11. The Secretary-General, pursuant to paragraph 13 of the resolution, has issued three reports on progress in the implementation of resolution 883 (1993). These reports are contained in documents S/1994/99 and Add.1 and Add.2.

B. Guidelines of the Committee

12. The Committee's bureau, as elected at the Committee's first meeting of each year, consists of a Chairman and two Vice-Chairmen. The Chairman of the Committee is elected in his or her personal capacity for the calendar year, while two delegations are elected to provide the Vice-Chairmen for the year, all three constituting the bureau of the Committee. For 1995, the bureau consisted of H.E. Mr. Karel Kovanda (Czech Republic) as Chairman, with the delegations of Oman and Germany providing the two Vice-Chairmen. For 1994, the bureau consisted of H.E. Mr. Karel Kovanda as Chairman, with the delegations of Oman and Spain providing the two Vice-Chairmen. For 1993, the bureau consisted of H.E. Mr. André Erdos (Hungary) as Chairman, with the delegations of Japan and Spain providing the two Vice-Chairmen. For 1992, the bureau consisted of H.E. Mr. André Erdos as Chairman, with the delegations of Belgium and Japan providing the two Vice-Chairmen.

13. Taking into account the provisions of resolution 748 (1992), at its 3rd meeting, on 30 April 1992, the Committee adopted a set of guidelines for the conduct of its work. 2/ The Committee's guidelines were transmitted to all States and to international organizations on 5 May 1992.

14. Following the adoption of resolution 883 (1993), by paragraph 9 of that resolution, the Security Council instructed the Committee to draw up expeditiously guidelines for the implementation of paragraphs 3 to 7 of resolution 883 (1993) and to amend and supplement, as appropriate, the guidelines for the implementation of resolution 748 (1992), especially its paragraph 5 (a).

15. At its 39th meeting, on 16 February 1994, the Committee adopted the new consolidated guidelines of the Committee for the conduct of its work. The guidelines were transmitted to all States and to international organizations on 22 February 1994.

16. At its 61st meeting, on 17 October 1995, the Committee adopted a number of measures aimed at making the Committee's procedures more transparent, as recommended by the Security Council in the note by its President dated 29 March 1995. To that end, the Committee decided, inter alia, to increase the practice of issuing press releases reflecting the most important matters discussed at the meetings. The Committee will continue to make available, on a

regular basis, tables indicating the status of emergency medical evacuation (MEDIVAC) flights processed under the "no-objection procedure". A compilation of decisions on other major issues considered at Committee meetings will also be prepared on a regular basis and made available to any delegation upon request. In addition, an annual report to the Security Council on its activities would be prepared by the Committee.

C. Provisions regarding certain goods and material

17. The Committee on several occasions, including at its 3rd meeting on 30 April 1992, its 45th meeting, on 1 September 1994, and its 60th meeting on 18 August 1995, considered the permissibility of the provision of aircraft components and parts to foreign commercial airlines operating within the Libyan Arab Jamahiriya. In its response, the Committee decided to draw the attention of the Governments concerned to the relevant Security Council resolutions, particularly paragraph 4 (b) of resolution 748 (1992) and paragraph 6 (c) of resolution 883 (1993).

18. Pursuant to paragraph 5 (a) of Security Council resolution 748 (1992) by which the Council prohibits the provision, including sale or transfer, to the Libyan Arab Jamahiriya of arms and related material, the Committee has consistently advised Governments against the shipment of goods and material to the Libyan Arab Jamahiriya that could be of possible dual use. On such technical matters, the Committee, in accordance with the guidelines for the conduct of its work, has also sought the advice of independent experts. For example, at its 17th meeting, on 3 March 1993, the Committee received a briefing by two experts with regard to its consideration of the permissibility of the shipment to the Libyan Arab Jamahiriya of eight stainless steel reactors and decided that, in the light of the possible dual purpose of the stainless steel reactors, the shipment of the consignment to the Libyan Arab Jamahiriya would contravene the provisions of resolution 748 (1992).

19. The Committee has also considered several queries from Member States with regard to paragraph 5 of resolution 883 (1993) by which the Council prohibits the provision to the Libyan Arab Jamahiriya of the items listed in the annex to that resolution.

D. Transfer of funds

20. With regard to the assets freeze imposed under resolution 883 (1993), at its 43rd meeting, on 4 May 1994, the Committee authorized the Chairman to convey to all States and international organizations its decision by which it stated that the transfer of funds through Libyan blocked accounts for legitimate diplomatic missions and international organizations in the Libyan Arab Jamahiriya, was, as an exception, permissible in terms of resolution 883 (1993). Accordingly, the Chairman's note to all States was issued on 23 June 1994 and the letter to all international organizations was issued on 1 July 1994 by the Secretariat. Regarding the transfer of funds to the Libyan Arab Jamahiriya for "legitimate commercial" purposes, the Committee, on 23 February 1995, decided that it was the responsibility of Member States to enforce the sanctions,

especially paragraphs 3 and 4 of resolution 883 (1993), using mechanisms they deemed appropriate and practical.

E. Humanitarian flights

21. Pursuant to paragraph 9 (e) of resolution 748 (1992), and at the suggestion of the United Nations Resident Coordinator in Tripoli, the Committee, at its 13th meeting, on 14 October 1992, approved special arrangements for emergency medical evacuation by air from the Libyan Arab Jamahiriya. Instructions and procedures concerning the measures so approved by the Committee were transmitted to all States and international organizations on 16 October 1992. The Committee subsequently approved two Libyan aircraft (air ambulance SN-601, registration No. 5A-DCK and air ambulance Jet Star L-329, registration No. 5A-DAJ) to be used for emergency MEDIVAC flights from the Libyan Arab Jamahiriya. The use of other aircraft would be considered on a case-by-case basis.

22. During 1995, the Committee approved 42 emergency MEDIVAC flights while, during 1994, 21 were approved.

23. By a note verbale dated 18 April 1995, Egypt requested the Committee's approval for 45 flights on Egypt Air from Cairo to Tripoli and Benghazi and on to Jeddah, and an equal number of return flights, for the purpose of transporting 6,000 Libyan pilgrims to perform the Haj.

24. At its 51st meeting, on 19 April 1995, the Committee approved the Egyptian request, with the following conditions: (a) the Government of Egypt would communicate to the Committee in advance the exact schedule, routing and aircraft registration number for each flight; (b) all flights would be direct, non-stop between the authorized destinations; (c) none of the aircraft would be owned by, leased from or controlled by the Libyan Arab Jamahiriya or any Libyan entity; (d) neither the Government nor public authorities of the Libyan Arab Jamahiriya nor any Libyan undertaking would, directly or indirectly, benefit financially from such flights, pursuant to paragraph 3 (a) and (b) of Security Council resolution 883 (1993); and (e) pursuant to the guidelines approved by the Committee, the aircraft must be inspected to ensure that they were operating exclusively for the declared humanitarian purposes and in accordance with the relevant provisions of Security Council resolution 748 (1992). Accordingly, these inspections were effected at Cairo, Tripoli, Benghazi and Jeddah on both the inbound and outbound flights, with the participation of United Nations officials.

25. Notwithstanding the above action of the Committee, verified reports confirmed that a Libyan aircraft crossed Egyptian airspace and landed in Jeddah on 19 and 20 April 1995. These flights were not authorized by the Committee and constituted a major violation of the sanctions regime against the Libyan Arab Jamahiriya. This matter was discussed at the informal consultations of the Security Council on 20 April 1995.

26. At its 56th meeting, on 31 May 1995, the Committee concluded its deliberations on the issue of the Libyan violations of the air embargo established under Security Council resolutions 748 (1992) and 883 (1993) by

adopting the text of the three communications to be addressed to the Libyan Arab Jamahiriya, Egypt and Saudi Arabia, respectively.

27. The Committee, at its 59th meeting, on 17 July 1995, approved further procedures and arrangements concerning the authorization and monitoring procedures for emergency MEDIVAC flights from the Libyan Arab Jamahiriya and the related issue of the maintenance and supply of spare parts for the predesignated four Libyan air ambulances as an annex to the special arrangements for emergency medical evacuations by air from the Libyan Arab Jamahiriya, adopted previously at the Committee's 13th meeting, on 14 October 1992.

28. The Committee, at its 61st meeting, on 17 October 1995, considered two notes verbales dated 4 and 10 October 1995 requesting the Committee's authorization, in principle, for air transport facilities by Libyan or United Nations aircraft to enable over a million "illegal infiltrators, nationals of African States, to return to their countries in order to avoid the hardships and dangers of travel created by the air embargo".

29. The intended repatriation would involve nationals of the following African countries: Mali (250,000 nationals; 500 flights), Chad (300,000 nationals; 600 flights), Niger (30,000 nationals; 60 flights), Ghana (20,000 nationals; 40 flights), West African States ((Benin, Côte d'Ivoire, Senegal, Guinea, Guinea-Bissau) (10,000 nationals; 40 flights)), Nigeria (7,000 nationals; 15 flights) and Sudan (500,000 nationals; 1,000 flights).

30. After careful consideration of the above matter, the Committee was unable to accede to the Libyan request. The Committee was of the view that the presence of foreign nationals in the Libyan Arab Jamahiriya and its desire to repatriate them did not constitute grounds for granting a humanitarian exception to the relevant Security Council resolutions.

F. Violations

31. In accordance with the Committee's mandate under resolution 748 (1992), the Chairman, on behalf of the Committee, transmitted, on 14 May 1992, a request to all States for information on violations or suspected violations of the arms embargo against the Libyan Arab Jamahiriya. On 15 May 1992, a similar appeal to national or international government or non-governmental organizations and interested individuals, was issued as a press release.

32. During the reporting period, the Committee received two reports of violations in respect of the Libyan Arab Jamahiriya, both concerning humanitarian flights. The first report concerned an unauthorized stopover on 30 January 1995 in direct contravention of the Committee's authorization for an emergency MEDIVAC flight. The second violation concerned unauthorized flights from Tripoli to Jeddah on 19 and 20 April 1995 (see paras. 23 to 26 above). Appropriate measures were taken by the Committee in response to the two violations.

III. REVIEWS BY THE SECURITY COUNCIL

33. On 12 August and 9 December 1992, the Security Council held informal consultations pursuant to paragraph 13 of resolution 748 (1992), by which the Council decided to review every 120 days or sooner, should the situation so require, the measures imposed by paragraphs 3 to 7 against the Libyan Arab Jamahiriya in the light of the compliance by the Libyan Government with paragraphs 1 and 2 of the resolution, taking into account as appropriate, any reports provided by the Secretary-General in his role as set out in paragraph 4 of resolution 731 (1992). So far, the Security Council has undertaken 11 such reviews.

34. In 1995, the Council undertook three reviews - on 30 March, 28 July and 22 November. On those occasions, the members found that conditions did not exist for modifying the regime of sanctions established by the Council in paragraphs 3 to 7 of resolution 748 (1992). Accordingly, the President of the Security Council issued statements on the same day (S/PRST/1995/14, S/PRST/1995/36 and S/PRST/1995/56), reflecting that position on behalf of the members of the Council.

Notes

1/ See S/26304.

2/ Incorporating the interim guidelines adopted by the Committee at the 2nd meeting and transmitted to all States on 16 April 1992.